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VENABLE BAETJER HOWARD AND  
CIVILLETI LLP  
PO BOX 34385  
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OFFICE OF PETITIONS

In re Application of  
Dietmar Zielke : DECISION ON APPLICATION  
Application No. 09/783,298 : FOR PATENT TERM ADJUSTMENT  
Filed: February 15, 2001 :  
Attorney Docket No. 31512-168762 :

This letter is in response to the "REQUEST FOR PTA CALCULATION REVIEW," filed November 20, 2003. Applicant requests that the initial determination of patent term adjustment under 35 U.S.C. §154(b) be reviewed for accuracy.

The request for correction of the initial determination of patent term adjustment (PTA) is GRANTED. The determination of PTA at the time of the mailing of the Notice of Allowance is ZERO (0) days.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance was ZERO (0) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On August 18, 2003, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is one hundred fifty-eight (158) days.

The Office initially determined a patent term adjustment of one hundred fifty-eight (158) days based on an adjustment for PTO

delay of sixty-seven (67) days, pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), and ninety-one (91) days, pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. §1.703(a)(2), reduced by zero (0) days of Applicant delay.

The PTO delay of 91 days has been found to be incorrect. Applicant mailed a reply to a non-final Office action on January 10, 2003. In response, the Office mailed a final Office action on February 21, 2003, within the four month time period set forth in 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. §1.703(a)(2). Accordingly, no PTO delay should have been assessed for the mailing of the February 21, 2003 final Office action.

Furthermore, a review of the application file reveals that Applicant should have been assessed delay of thirty-one (31) days for the filing of his January 10, 2003 response, and fifty-five days for the filing of an RCE on July 15, 2003, both pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. 1.704(b).

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is **zero (0) days** (67 days of PTO delay, reduced by 86 (31 + 55) days of Applicant delay).

To the extent that this letter was submitted to advise the Office of an error in Applicant's favor, the \$200.00 application fee under 37 C.F.R. § 1.705(b) was not required, and has not been charged. The Office thanks Applicant for his good faith and candor in bringing this matter to the attention of the Office.

The application file is being forwarded to Group Art Unit 1731 for consideration of the RCE and IDS, filed March 31, 2004.

Telephone inquiries specific to this letter should be directed to Cliff Congo, Petitions Attorney, at (703) 305-0272.

*Karin Ferriter  
per*

Karin Ferriter  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

Enclosure: Copy of adjusted PAIR calculation